

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD BECHTELHEIMER, JR.,

Plaintiff-Appellant,

v

FAIK YOUSIF,

Defendant-Appellee.

UNPUBLISHED

August 21, 2008

No. 278261

Oakland Circuit Court

LC No. 2005-065226-NO

Before: Schuette, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a jury verdict of no cause of action and the trial court's denial of his motion for a new trial and/or judgment notwithstanding the verdict. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff fell on the steps of a rental house owned by defendant and, as a result, suffered a broken hip. Plaintiff alleged that a defect in the threshold at the top of the stairs caused him to fall. The jury returned a verdict of no cause of action in favor of defendant. Plaintiff's subsequent motion for a new trial and/or judgment notwithstanding the verdict was denied.

Plaintiff argues that the jury returned an erroneous verdict because, after finding that defendant was negligent, it found that plaintiff did not suffer an injury in the manner claimed. As a result, the verdict was for no cause of action. Plaintiff suggests that this finding was contradictory and the result of a flawed jury verdict form. Plaintiff also claims the evidence clearly showed he suffered an injury as a result of a defect in the threshold at the top of the stairs.

First, because plaintiff expressly indicated approval of the jury instructions and the jury verdict form, any objection to them was waived. *Chastain v GMC*, 254 Mich App 576, 591-592; 657 NW2d 804 (2002). In any event, the trial court properly instructed the jury as to the elements of a premises liability claim prior to supplying it with a jury verdict form that had been reviewed and approved by each party. As such, the jury instructions and verdict form fairly and adequately presented the issues to be decided by the jury.

As to plaintiff's contention that he is entitled to a new trial because the jury's verdict was contrary to the great weight of the evidence, this Court reviews a trial court's decision whether to grant a new trial for an abuse of discretion. *Settlington v Pontiac General Hosp*, 223 Mich App 594, 608; 568 NW2d 93 (1997). Generally, courts will set aside a verdict and grant a new trial in

a civil action when the verdict is inconsistent and contradictory. *Clark v Seagrave Fire Apparatus, Inc*, 170 Mich App 147, 150-151; 427 NW2d 913 (1988). But “[i]f there is an interpretation of the evidence that provides a logical explanation for the findings of the jury, the verdict is not inconsistent.” *Granger v Fruehauf Corp*, 429 Mich 1, 7; 412 NW2d 199 (1987). That is, a new trial cannot be ordered if an interpretation of the evidence would support the jury’s decision. *Kelly v Builders Square, Inc*, 465 Mich 29, 39, 42; 632 NW2d 912 (2001). In reviewing the evidence and arguments at trial in an attempt to harmonize the jury’s verdict, “one must consider the evidence in the full context of the case, including the arguments of counsel, the instructions given by the court, and, if appropriate, the pleadings.” *Lagalo v Allied Corp*, 457 Mich 278, 286 n 10; 577 NW2d 462 (1998).

Plaintiff’s argument on appeal misinterprets the jury’s findings. The jury’s finding that defendant was negligent in maintaining the subject threshold does not necessarily require a finding that he was injured as a result of that negligence. In fact, the jury verdict form specifically asked, “Was the plaintiff injured in one or more of the ways claimed?” The jury answered the question in the negative.

This is not a situation where there was but one possible cause of plaintiff’s injury. Specifically, there were at least two possible conditions that caused plaintiff to fall. The jury’s finding indicates that plaintiff was not injured as a result of a defective threshold. In the alternative, the evidence showed that plaintiff slipped on melted snow and/or ice on the stairs. Notes taken by medical staff upon plaintiff’s admission to the hospital indicate that he presented “after falling on icy/wet stairs.” Likewise, the emergency room physician record specified that plaintiff “slipped on ice/water while climbing the stairs of a friend’s house.” Before surgery, plaintiff told another doctor that “he slipped and fell approximately 6 or 7 steps on some ice and snow.” Weather records confirmed that it had snowed on the day of the accident. A neighbor also testified it had snowed that day and the stairs were “a little slippery.” Finally, the tenant of the house acknowledged that the stairs were wet on the day of the accident.

A review of the evidence logically explains why the jury answered question number 2 on the jury verdict form, “Was the plaintiff injured in one or more the ways claimed,” in the negative. This conclusion is supported by the record and suggests that plaintiff failed to show that defendant’s negligence was the cause of his injury. Accordingly, the trial court did not abuse its discretion by denying plaintiff’s motion for a new trial and/or judgment notwithstanding the verdict.

Affirmed.

/s/ Bill Schuette
/s/ Brian K. Zahra
/s/ Donald S. Owens